

Remarks**Reconsideration of Restriction under 37 C.F.R. 1.143**

The Examiner imposed a twelve-way restriction to one of the following Group I to Group XII inventions as she alleges that "The inventions are distinct, each from the other because of the following reasons: the products of Groups I-VI differ materially in structure and element so much so as to be patentably distinct." and noting that "In addition, a reference which anticipates one group may not even render obvious the other." The Examiner further alleges that "Inventions of Groups I-VI and Groups VII-XII are related as product and process of use."

Specifically, the inventions as defined and classified by the Examiner are:

Group	Invention	Class/subclass
I	Claims 1-3, 19, 21, 23-26 and 35, drawn to products of formula (1) or formula (2) wherein one of X and Y is N and the other is CH; and the Ar attached to the fused cyclohexenyl ring in the formulas is a phenyl.	548/452+
II	Claims 1, 19, 21, 23, 25 and 35, drawn to products of formula (1) or formula (2) wherein one of X and Y is N and the other is CH; and the Ar attached to the fused cyclohexenyl ring in the formulas is a 5-membered aromatic heterocycle.	548/120+
III	Claims 1, 19, 21, 23, 25 and 35, drawn to products of formula (1) or formula (2) wherein one of X and Y is N and the other is CH; and the Ar attached to the fused cyclohexenyl ring in the formulas is a 6-membered aromatic heterocycle.	544 & 546
IV	Claims 1-22 and 35, drawn to products of formula (1) or formula (2) wherein X and Y are each N; and the Ar attached to the fused cyclohexenyl ring in the formulas is a phenyl.	548/356.1+
V	Claims 1, 19, 21 and 35, drawn to products of formula (1) or formula (2) wherein X and Y are each N; and the Ar attached to the fused cyclohexenyl ring in the formulas is a 5-membered aromatic heterocycle.	548/120+
VI	Claims 1, 19, 21 and 35, drawn to products of formula (1) or formula (2) wherein X and Y are each N; and the Ar attached to the fused cyclohexenyl ring in the formulas is a 6-membered aromatic heterocycle.	544 & 546
VII	Claims 27-34, drawn to a method for the treatment of tumors or cancerous cells by administering products of formula (1) or formula (2) wherein one of X and Y is N and the other is CH; and the Ar attached to the fused cyclohexenyl ring in the formulas is a phenyl.	514/412+
VIII	Claims 27-34, drawn to a method for the treatment of tumors or cancerous cells by administering products of formula (1) or formula (2) wherein one of X and Y is N and the other is CH; and the Ar attached to the fused cyclohexenyl ring in the formulas is a 5-membered aromatic heterocycle.	514/359+
IX	Claims 27-34, drawn to a method for the treatment of tumors or cancerous cells by administering products of formula (1) or formula (2) wherein one of X and Y is N and the other is CH; and the Ar attached to the fused cyclohexenyl ring in the formulas is a 6-membered aromatic heterocycle.	514/222.2+
X	Claims 27-34, drawn to a method for the treatment of tumors or cancerous cells by administering products of formula (1) or formula (2) wherein X and Y are each N; and the Ar attached to the fused cyclohexenyl ring in the formulas is a phenyl.	514/403+
XI	Claims 27-34, drawn to a method for the treatment of tumors or cancerous cells by administering products of formula (1) or formula (2)	514/359+

	wherein X and Y are each N; and the Ar attached to the fused cyclohexenyl ring in the formulas is a 5-membered aromatic heterocycle.	
XII	Claims 27-34, drawn to a method for the treatment of tumors or cancerous cells by administering products of formula (1) or formula (2) wherein X and Y are each N; and the Ar attached to the fused cyclohexenyl ring in the formulas is a 6-membered aromatic heterocycle.	514/222.2+.

Applicants respectfully traverse this twelve-way restriction requirement based on the following arguments.

Applicants respectfully submit that the twelve-way restriction as imposed by the Examiner is improper based on the following grounds:

1. MPEP 803 mandates that there must be a serious burden on the Examiner as one of two criteria for restriction between patentably distinct inventions. A prima facie showing of a serious burden on the Examiner is made by the Examiner showing by appropriate explanation of separate classification, or separate status in the art, or a different field of search. The Examiner alleges that an undue burden would be imposed on the Examiner and the Office's resources to examine the instant application unrestricted.
2. Applicants maintain that no serious burden would be placed on the Examiner or the Office's resources to search all of the claims as they are in the same and/or similar classification as will be discussed below.
3. Applicants respectfully refer the Examiner to MPEP § 803 where it is stated that "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions."
4. Applicants respectfully bring to the Examiner's attention that there was no lack of unity of invention imposed on the corresponding PCT Application No. PCT/FR02/02638.
5. Applicants maintain that product and process of using claims should be rejoined pursuant to MPEP821.04 that states "Where the application as originally filed discloses the product and the process for making and/or *using the product*, and only claims directed to the product are presented for examination, when a product claim is found allowable, applicant may present claims directed to the process of making and/or *using the patentable product by way of amendment* pursuant to 37 CFR 1.121" (emphasis added).

6. Finally, the instant twelve-way restriction both imposes undue expenses and also discourages Applicants to maintain a plurality of patents, which is against the constitutional intent to promote the progress of science and technology and thus against the public policy.

Applicants respectfully submit the following comments pertaining to specific issues raised in items 1-6 above.

First applicants respectfully submit that the search of all claims 1-35 should not impose an undue burden on the Examiner. Applicants respectfully draw attention to the Table shown above, which lists the 12 groupings of the invention. Groups I-VI and Groups VII-XII are related as product and process of use. With respect to Groups I-VI, it should be quite apparent that Groups I, II, IV and V are in class 548 wherein inventions II and V are also in the same subclass 120+. Furthermore each of the inventions of Groups III and VI are in the classes 544 and 546, and neither Group III and VI was subclassified. Applicants respectfully submit that these inventions are in the same or similar classification and should not impose any undue burden on the Examiner in searching Groups I-VI together. Even more importantly, when the Examiner is searching in one class, that itself may facilitate the search of other invention groups. That is, invention groups II and V can be searched together in class 548, subclass 120+, and while searching these invention groups it is highly likely that references pertaining to invention groups I and IV, and possibly for invention groups III and VI, will be found. Accordingly, Applicants respectfully request that all of the inventions be rejoined and examined together.

Secondly, Applicants respectfully submit that the instant invention is a national stage entry of international application No. PCT/FR02/02638, for which an international preliminary examination report (IPER) has been established. A copy of the French language IPER is enclosed herewith for the Examiner's review and Applicants will provide an English translation if necessary. Claims 1-35 in the instant application are modeled after original claims 1-13 in the international application and have been presented more suitably in the US format. Applicants respectfully draw attention to section 3, item IV, on the second page of the IPER wherein the box pertaining to the absence of unity of invention is not checked and thus unity of invention is not an issue based on the international preliminary examination. Therefore, Applicants respectfully request that similar standards as used in the international examination be used in the instant application, and that imposition of the instant twelve-way restriction requirement be withdrawn.

Thirdly, Applicants submit that product (invention groups I-VI) and the corresponding process of use claims (invention groups VII-XII) should be rejoined pursuant to MPEP 821.04 that reads as quoted in item 5 above.

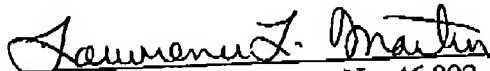
Finally, the instant twelve-way restriction imposes both undue expenses and resource allocation requirements on Applicants, since Applicants would have to prosecute and maintain a plurality of patents. Applicants are thus discouraged from obtaining and maintaining full patent protection for their invention, which is against the constitutional intent to promote the progress of science and technology, and thus against the public policy. For these reasons and the reasons advanced above, Applicants respectfully request the Examiner to reconsider and withdraw the twelve-way restriction requirement, and to rejoin the claims of Groups I-XII

In the event the Examiner wishes to contact the undersigned regarding any matter, please call (collect if necessary) the telephone number listed below.

Applicants further affirm their right to file one or more divisional applications with respect to any of the non-elected subject matter.

Applicants believe there are no fees due for this response. However, if the Examiner deems that fees are due, please charge these fees to Deposit Account No. 18-1982 for Aventis Pharmaceuticals Inc. Bridgewater, NJ. Please credit any overpayment to Deposit Account No. 18-1982. A duplicate copy of this transmittal letter is enclosed for accounting purposes.

Respectfully submitted,


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Aventis Docket No. ST01021US CNT